

<div>CITY OF SAN JOSÉ, CALIFORNIA</div> <div>Department of Planning, Building and Code Enforcement</div> <div>801 North First Street, Room 400</div> <div>San José, California 95110-1795</div> <div>STAFF REPORT</div>		Hearing Date/Agenda Number	
		P.C. 08/13/03 Item: 3.c.	
		File Number	
		CP 03-038	
		Application Type	
		Conditional Use Permit	
Council District		7	
Planning Area		South	
Assessor's Parcel Number(s)		477-24-049	
PROJECT DESCRIPTION			
		Completed by: Jeff Roche	
Location: Northerly side of Leo Avenue, approximately 520 feet southwesterly of South 7 th Street			
Gross Acreage: 2.51		Net Acreage: 2.51	
		Net Density: N/A	
Existing Zoning: HI-Heavy Industrial		Existing Use: Towing Yard	
Proposed Zoning: No change		Proposed Use: Vehicle auctions at an existing towing yard	
GENERAL PLAN			
		Completed by: JR	
Land Use/Transportation Diagram Designations:		Project Conformance:	
Heavy Industrial		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> See Analysis and Recommendations	
SURROUNDING LAND USES AND ZONING			
		Completed by: JR	
North: Industrial		HI Heavy Industrial	
East: Industrial		HI Heavy Industrial	
South: Industrial		LI Light Industrial	
West: Industrial		HI Heavy Industrial	
ENVIRONMENTAL STATUS			
		Completed by: JR	
<input type="checkbox"/> Environmental Impact Report found complete		<input checked="" type="checkbox"/> Exempt	
<input type="checkbox"/> Negative Declaration circulated on		<input type="checkbox"/> Environmental Review Incomplete	
<input type="checkbox"/> Negative Declaration adopted on			
FILE HISTORY			
		Completed by: JR	
Annexation Title: Monterey Park No. 5		Date: 01/27/1955	
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION			
<input checked="" type="checkbox"/> Approval		Date: _____	
<input type="checkbox"/> Approval with Conditions		Approved by: _____	
<input type="checkbox"/> Denial		<input checked="" type="checkbox"/> Action	
		<input type="checkbox"/> Recommendation	
OWNER/APPLICANT		CONTACT	
Nemo and Andrea Ganoza		Vincent Rivero	
Century Tow, Inc		HMH Engineers	
215 Leo Avenue		P.O. Box 611510	
San José, CA 95112		San José, CA 95131	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Jeff Roche

Department of Public Works
No comments

Other Departments and Agencies
See attached memorandum from Fire Department and Code Enforcement Division

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Century Tow, Inc., is requesting a Conditional Use Permit to allow vehicle auctions at an existing towing yard site of 2.51 gross acres. Towing yards are allowed by right in the HI Heavy Industrial Zoning District; however, the Zoning Code requires a Conditional Use Permit (CUP) for auction uses in the HI District. This CUP also functions as a Site Development Permit for the installation of improvements. Proposed site improvements include the installation of new, solid, perimeter fencing and additional landscaping (including trees) along the westerly side of the site.

The State of California requires that all tow companies conduct lien sales to dispose of vehicles that are not claimed within a given time period. The lien sale is conducted in the manner of an auction. The vehicle auctions are limited to unclaimed vehicles originating from the towing yard located on the subject sites. Only vehicles brought to the site by the on-site tow operation will be sold at the lien sales. The lien sales are proposed to be on Monday, Wednesday, and Friday of every week (9:00 am to 12:00 pm). In order to ensure that non-operational vehicles sold at the lien sale are not left on City property, the applicant will not release any non-operational vehicles to a buyer without a pre-determined method of transporting the vehicle away from the subject site.

The site is surrounded on all sides by industrial uses.

ENVIRONMENTAL REVIEW

Because this project involves use of an existing site constructed for industrial uses, it is considered a negligible expansion of use and, the Director of Planning concluded that the proposed project is exempt from environmental review under Section 15301 of the California Environmental Quality Act Guidelines.

GENERAL PLAN CONFORMANCE

The existing facility has a General Plan designation of Heavy Industrial. Towing facilities and associated lien sales are a type of industrial use that the Director of Planning has concluded is consistent with the Heavy Industrial General Plan designation.

ANALYSIS

The primary issue analyzed for the project is land use compatibility.

Due to the limited size of the proposed auction and the fact that the site is surrounded by industrial uses, staff does not anticipate that the lien sales will result in land use compatibility impacts on adjacent properties. Convenient, off-street parking is being provided for lien sale customers in the area nearest to where the vehicle auctions occur three days per week. The applicant is proposing to install new landscaping and fencing (including (11) Chinese Pistache trees and a solid, 7-foot high fence) along the westerly side of the site as shown on the project plans. As part of the proposed Operation Plan (see attached) the applicant has agreed to notify vehicle auction customers of the new on-site parking and its location, accessed from Leo Avenue. As conditioned, the project is required to conform to the specifications of the Operational Plan. Staff believes that the proposed project will improve the land use compatibility of the towing yard by providing necessary on-site parking.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Heavy Industrial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The existing facility has the General Plan designation of Heavy Industrial. The proposed use is consistent with the subject site's General Plan Land Use/Transportation Diagram designations of Heavy Industrial.
3. The Zoning Code allows auctions uses in the Heavy Industrial Zoning District upon issuance of a Conditional Use Permit.
4. The project includes the installation of (11), new trees and solid fencing along the westerly side of the site.
5. An Operation Plan has been submitted for the proposed project.
6. Proposed improvements to the site will provide convenient off-street parking for lien sale customers.
7. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:

By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and

By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Conditional Use Permit for Century Towing" dated May 5, 2003, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Operation Plan.** This use shall be operated in the manner specified in the approved Operation Plan titled "Operation Plan for Century Auto Towing Facility, 215 Leo Avenue – San José" dated May 15, 2003. Changes to the Operation Plan shall require additional approval as determined necessary by the Director of Planning. Changes to the Operation Plan shall require additional permitting, to the satisfaction of the Director of Planning.
4. **Lighting.** All new lighting shall conform to the Zoning Ordinance and the City Council Policy for Outdoor Lighting.
5. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP 03-038 shall be printed on all construction plans submitted to the Building Division.
6. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
7. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
8. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements to the satisfaction of the Director of Public Works:
 - a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date

of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance